

**Office of the Attorney General
Responses to Follow-up Questions**

1. Before 1965 if you were visiting or an ambassador, anyone born here of non-citizen parents was not a citizen, but congress changed that in 66 or 67 to state that anyone born in the United States, regardless of the legal status of the parents are full-fledged citizens.

The Immigration and Naturalization Services Act of 1965 (also known as the Hart-Celler Act or the INS Act of 1965) abolished the national-origin quotas that had been in place in the United States since the Immigration Act of 1924. Thus, through that piece of legislation, the preferential treatment of European immigrants was abolished.

In reference to the other question about birthright citizenship, this excerpt from a memo from the Department of Justice's Office of Legal Counsel that treats the subject:

"The phrase "subject to the jurisdiction thereof" was meant to reflect the existing common law exception for discrete sets of persons who were deemed subject to a foreign sovereign and immune from U.S. laws, principally children born in the United States of foreign diplomats, with the single additional exception of children of members of Indian tribes. Apart from these extremely limited exceptions, there can be no question that children born in the United States of aliens are subject to the full jurisdiction of the United States. And, as consistently recognized by courts and Attorneys General for over a century, most notably by the Supreme Court in United States v. Wong Kim Ark, there is no question that they possess constitutional citizenship under the Fourteenth Amendment."

<http://www.usdoj.gov/olc/denytess31.htm>

2. With regards to children born in the country, I would like information on international requirements from international law regarding children born in the country.

There is one treaty that directly addresses the welfare of children, other than during times of war. In September 1990, the UN entered into force the Convention on the Rights of the Child. (<http://www.unhchr.ch/html/menu3/b/k2crc.htm>) The US is a signatory to this Convention but has not yet ratified it. It is unlikely the US will ratify this treaty in the immediate future.

It is Matt Conrad's opinion that the impetus for this Convention was to stop and prevent child abuse and child labor. Article 7 and Article 9 of the Convention are probably the most applicable to the issues at hand. Article 7 states, "...as far as possible, the [child has the] right to know and be cared for by his or her parents." Also, Article 9.3 states that a child has a right not to be separated from his parents against his will. This Article also

addresses what happens in the event that a child is separated from his parent due to deportation proceedings.

In short, and as referenced in the answer to question 1, except in special circumstances, children born in the United States are United States citizens, and the US has no special duty to them beyond that owed to any other minor citizen. Generally, the domestic law system in the US is designed to always take into account the “best interest of the child.” While this statement is an oversimplification of US family law, it is a basic tenet in all 50 states.

3. In the fall Delegate Marshall asked for an informal opinion because Loudon wanted an ordinance to require businesses to check legal status. I was told in an opinion from Stephanie Hammond that they cannot do that because it is adding to the burden of the 1986 law.

The answer that Stephanie Hamlett provided to Delegate Marshall in the informal opinion that he referenced is correct. This is not an Official Attorney General’s opinion although that issue (the extent of federal preemption under 8 USC Section 1324a) is at least tangentially addressed in the Official Opinion issued on October 15, 2007 that was included as a handout.

4. It is Delegate Marshall’s understanding that there were 70 jurisdictions that made requests across the east coast, but only 1 training center in Savannah, Georgia with 24 slots for training.

Immigration and Customs Enforcement (ICE) is willing to train locally or regionally if there is enough interest and it makes sense logistically and fiscally from both the federal and state perspective to do so. That is an issue that the requesting agency has to work out with ICE.